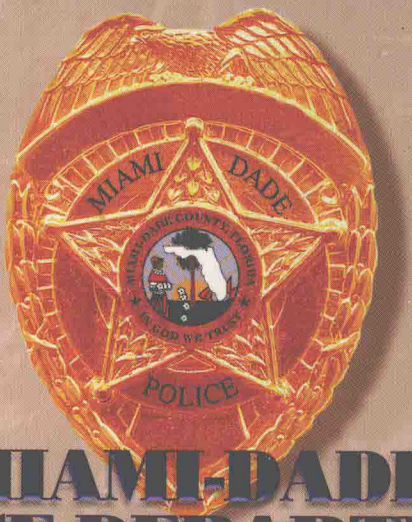
2003 FLORIDA LAW ENFORCEMENT HANDBOOK®



MIAMI-DADE POLICE DEPARTMENT

CARLOS ALVAREZ
DIRECTOR

MIAMI-DADE COUNTY EDITION

2003
FLORIDA
LAW ENFORCEMENT
HANDBOOK®

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INTRODUCTION

This handbook was first developed in 1975 by the Police Legal Bureau of the Miami-Dade Police Department for use as a ready reference text for all law enforcement officers in the department. In 1979, the handbook received a New County Achievement Award from the National Association of Counties.

The 2003 edition contains a compilation of both procedural and substantive state statutes and the state traffic laws. It contains selected penal sections of the Metropolitan Code of Miami-Dade County as well as sections of that Code on traffic offenses not covered by state statutes. All amendments to the statutes enacted by the 2002 session of the Florida Legislature have been included; applicable amendments to the Miami-Dade County Code have also been included.

In addition, there is a section on guidelines for specific procedures of particular relevance to the everyday operations of law enforcement officers. These include such topics as lineups, stop and frisk, on-scene identification, juveniles, arrest, criminal liability, repossession, investigative detention, landlord-tenant law, and use of force.

It should be emphasized that this book contains only selected statutes. It is not an exhaustive compilation of all the law. Further, the guidelines section contains just that — guidelines — based upon principles of law enunciated either in statutes or by the courts. Whenever a procedural question arises regarding the application of a statute or a guideline, an officer should first consult with his supervisor and then, if appropriate, with a Legal Advisor of the Department for guidance.

It is the intention of the Department to provide an annual update of this volume with revised statutes, guidelines, and other materials. Between printings, officers are referred to Departmental Legal Bulletins and Legal Notes for reports and discussions of recent legislation and court decisions.

CARLOS ALVAREZ, Director
Miami-Dade Police Department
November 2002

FOREWORD

Upon receipt of this 2003 **Handbook,** police officers should take time to make an inspection of the contents. Special attention should be paid to the table of contents which precedes each color-coded section, as well as to the index in the back of the Handbook; this will apprise the officer of those statutes and topics which he or she can expect to find.

Since the publication of the 2002 **Florida Law Enforcement Handbook®**, there have been some significant changes made to existing laws, as well as the creation of new laws. Police officers should familiarize themselves with the following areas:

§316.0075	Operator use of commercial mobile radio services and electronic communications devices.
§316.126	Operation of vehicles and actions of pedestrians on approach of authorized emergency vehicle.
§316.191	Racing on highways.
§316.1939	Refusal to submit to testing; penalties.
§316.2127	Operation of utility vehicles on certain roadways by homeowner's associations.
§319.22	Transfer of title.
§507.11	Criminal penalties – Chapter 507 Moving Services
§784.046	Action by victim of repeat violence or dating violence for protective injunction, issuance; statewide verification system; enforcement.
§790.166	Manufacture, possession, sale, delivery, display, use, or attempted use of a weapon of mass destruction or hoax weapon of mass destruction prohibited; definitions; penalties.
§810.0975	School safety zones; definitions; trespass prohibited; penalty.
§810.0145	Theft from persons 65 years of age or older; reclassification of offenses.
§817.2341	False or misleading statements or supporting documents; penalty.
§817.569	Criminal use of a public record or public records information; penalties.
§839.13	Falsifying records.
§860.065	Commercial transportation; penalty for use in commission of a felony.

Janet Browdy Lewis
Editor—2003 Edition

CONTENTS OF THE HANDBOOK

The Handbook is divided into eight sections as listed below.

Each section is printed on a different color stock and is preceded by a **table of contents.** The statutes and ordinances are arranged numerically within each section; the Handbook is paginated at the bottom of the page. A comprehensive index appears in Section VIII.

See detailed Table of Contents preceding each section, or the alphabetical index in Section VIII for further reference.

LEGAL GUIDELINES TABLE OF CONTENTS

ARREST

Bondsmen

Powers and Procedures

Bondsmen and runners are registered and regulated under the provisions of Chapter 648, **Florida Statutes.** Their arrest powers are further defined and governed by Chapter 903, **Florida Statutes**.

A bondsman (surety) assumes technical responsibility for an accused party after the placement of bail by the defendant. It is the duty of the bondsman to assure the appearance of the accused for trial. If the defendant fails to appear, the bond is forfeited and the bondsman can then arrest the non-appearing party.

The bondsman may also surrender the accused at any time prior to trial due to a breach of the bond agreement, or within two years after a forfeiture of the bond. The bondsman may arrest his or her principal (accused party) without a warrant at any time or on any day of the week. Although there is no authority to enter on or remain in the premises of a third person as the bondsman's presence would constitute a criminal violation, he or she may break and enter into the accused's house without a warrant to make an arrest.

Anytime he or she attempts to arrest a subject, the bondsman should have a certified copy of the bond in his or her possession; this is evidence of the bondsman's authority. If officers are called to a scene of a disturbance involving a bondsman, they should first determine what authority the bondsman has. If his broad authority applies to the facts as the officers find them, then the bondsman should be allowed to leave with his or her principal in custody. However, if the bondsman has no authority, such as in third-party home forceable entries, then law enforcement action should be considered.

A bondsman may authorize a peace officer to arrest a principal, but this can be done only after the authorization to arrest is properly endorsed on a certified copy of the bond. It must be noted that only when these procedures have been properly complied with does a peace officer have power to interfere with the freedom of the accused, and make an arrest at the direction of a bondsman. If these safeguards are not met, the officer and bondsman could be civilly liable for false arrest.

Similarly, an officer does not have to assist or remain with the bondsman during the arrest of a principal merely at the request of a bondsman. The presence of an officer in such a situation lends the color and authority of law to the surety's arrest of his or her principal. If the arrest is improper, or if the bondsman becomes overly aggressive, the officer could be held liable for damages. This, however, does not preclude an officer from being near the arrest scene, but detached from the actual arrest, in case he or she might observe any other violations taking place.

If an officer has doubts as to whether or not a bondsman or runner is licensed, the officer may verify their status by contacting the Department of Insurance, Bureau of Licensing, in Tallahassee. The phone number is (904) 922-3137, SUNCOM (8) 292-3137.

Bondsmen and runners have no special authority to carry concealed weapons or firearms. Unless they have a valid concealed weapons permit, they must abide by all laws governing citizen possession and use of weapons.

Diplomatic and Consular Officials

The following information comes from the Special Agent in Charge of the Miami branch, Office of Security, U.S. Department of State. It is published verbatim for the information and guidance of all law enforcement officers:

General Policy

Diplomatic and Consular Officers should be accorded their respective privileges, rights and immunities as directed by international law and federal statutes. These officials should be treated with the courtesy and respect that befit their distinguished positions. At the same time, it is well established principal of international law that, without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect laws and regulations.

Consular Officers

Consular Officers are Consuls-General, Deputy Consuls-General, Consuls and Vice-Consuls. They are also official

representatives of foreign governments. Consular Officers are required to be treated with due respect, and all appropriate steps are to be taken to prevent any attack on their person, freedom or dignity. They are entitled to limited immunities as described below.

Immunities Accorded to Career Consular Officers

Under prevailing international law and agreement, a foreign career Consular Officer is not liable for arrest or detention pending trial except in the case of a grave crime (felony offense that would endanger the public safety) and pursuant to a decision by the competent judicial authority. His immunity from criminal jurisdiction is limited to acts performed in the exercise of consular functions and is subject to court determination.

Identification of Accredited Consular Officers

Career Consular Officers can be identified by credentials issued by the State Department and by other locally issued official identification papers.

The State Department credential bears its seal, the name of the officer, his title and the signature of State Department officials.

Honorary Consuls

Often nationals or permanent residents of the receiving state are appointed and received as honorary consular officers to perform the functions generally performed by career Consular Officers. Such officers may possess identification cards from the State Department, or they may exhibit reduced-size copies of the diplomatic note evidencing recognition by the United States Government. These individuals are not immune from arrest or detention; they are also not entitled to personal immunity from the civil and criminal jurisdiction of the receiving state except as to official acts performed in the exercise of their consular functions. However, appropriate steps must be provided to accord to such officers the protection required by virtue of their official position. In addition, the consular archives and documents of a consular post headed by an honorary consular are inviolable at all times and wherever they may be, provided they are kept from other papers and documents of a private or commercial nature relating to the other activities of an honorary consul and persons working with him.

Families of Consular Officers

Family members of Consular Officers do not enjoy the same privileges and immunities with respect to the civil and criminal jurisdiction of the receiving state as do Consular Officers. However, they should be accorded appropriate courtesy and respect. See further comment below regarding offenses involving family members of a Consular Officer.

Consular Premises

Consular premises used exclusively for the work of the consular post cannot be entered without explicit permission of the head of the consular post or his designee or by the head of the diplomatic mission. This permission may be assumed in the case of fire or other disaster requiring prompt protective action.

Consular Archives, Documents, Records, and Correspondence

The consular archives and documents are inviolable at all times and wherever they may be. The official correspondence of the consular post, which means all correspondence relating to the consular post and its functions, is likewise inviolable.

Methods of Handling Selected Incidents, Criminal Violations or Minor Offenses by Consular Officers

It is the policy of the U.S. Department of State with respect to alleged criminal violations by persons with immunity from criminal jurisdiction to encourage law enforcement authorities to pursue investigations vigorously, to prepare cases carefully and completely, and to document properly each incident so that charges may be pursued as far as possible in the U.S. judicial system.

Whatever the offense or circumstances of contact law enforcement officers should keep in mind that such persons are official representatives of foreign governments who are to be accorded the maximum degree of respect possible under the circumstances. It is not an exaggeration to say that police handling of incidents in this

country may have a direct effect on the treatment of U.S. diplomatic or consular personnel abroad.

When a law enforcement officer is called to the scene of a criminal incident involving a person who claims diplomatic or consular immunity, the first step should be to verify the status of the suspect. Should the person be unable to produce satisfactory identification and the situation be one that would normally warrant arrest or detention, the officer should inform the individual that he or she will be detained until his or her identify can be confirmed. **In all cases, including those in which the suspect provides a State Department issued identification card, the law enforcement officer should verify the status with the U.S. Department of State or in the case of the U.N. community, with the U.S. Mission to the United Nations.** Once the status is verified, the officer should prepare his or her report, fully describing the details and circumstances of the incident in accordance with normal police procedures. If the suspect enjoys personal inviolability, he or she may not be handcuffed, except when that individual poses an immediate threat to safety, and may be be arrested or detained. Once all pertinent information is obtained, that person must be released . A copy of the incident report should be faxed or mailed to U.S. Department of State in Washington, D.C. , or to the U.S. Mission to the U.N. in New York in cases involving the U.N. community, as soon as possible. Detailed documentation of incidents is essential to enable the U.S. Department of State to carry out its policies.

Moving Traffic Violations

When a Consular Officer is stopped for a moving traffic violation, the officer on the scene, upon being advised by the driver that he or she is a Consular Officer and ascertaining that he or she possesses the proper credentials, should exercise discretion based on the nature of the violation and either let him or her go with a warning of the danger of his or her actions or proceed with issuance of appropriate citation. **Mere issuance of a traffic citation does not constitute arrest or detention in the sense referred to above.**

Driving While Under the Influence

The primary consideration in this type of incident should be to see that the Consular Officer is not a danger to himself or herself or the public. Based upon a determination of the circumstances, the following options are available:

1. Take him or her to the station or a location where he or she can recover sufficiently to enable him to drive safely.
2. Take him or her to a telephone so that he or she can call a relative or a friend to come for him or her.
3. Call a taxi for him or her.
4. Take him or her home.

Unless a Consular Officer is considered serious danger to himself or herself or others, he or she should not be physically restrained or subjected to a sobriety test.

At best, this is a sensitive situation. The Officer should be treated with respect and courtesy. It should be impressed upon him or her that the police officer's primary responsibility is to care for his or her safety and the safety of others.

Offenses Involving Family Members of a Consular Officer

Family members of a Consular Officer cannot claim immunity. However, consideration should be given to the special nature of this type of a case. A violation should be handled, when possible, through the seeking of a complaint. The individual should be released once positive identification is made and the relationship with the Consular Official is verified. If the relative is a juvenile, as in juvenile cases, the subject should be released to the parent Consular Officer.

If any question arises as to the authenticity of credentials, the Office of Security of the Department of State may be contacted at 305-536-5781.

Foreign Nationals

In 1967, the United States ratified the Vienna Convention on Consular Relations. Vienna Convention on Consular Relations, April 24, 1963, art. 36, 21 U.S.T. 77, T.I.A.S. No. 6820. This treaty mandates that foreign nationals who are arrested or detained be advised of their right to consult with members of their consulate or consular officials. In some instances it is mandatory that the arresting or detaining authority notify the nearest consular offi-

cials of the arrest or detention of the foreign national, regardless of the national's wishes. The provisions of this treaty must be applied to the arrest or detention of foreign nationals who are signatories to the treaty regardless of whether the United States extends diplomatic recognition to that nation, e.g., Cuba.

The provisions of Article 36 of the Vienna Convention relating to the arrest of the foreign nationals require officers arresting or detaining foreign nationals from countries to which the United States extends diplomatic recognition to immediately notify the nearest consul or other officer of the national concerned or, if unknown, the nearest state judge who shall in turn notify either of the above.

For purposes of consular notification, a foreign national is defined as any person who is not a United States citizen. This includes resident aliens and foreign nationals illegally in the United States. When a foreign national is arrested, officers should take the following steps:

1. Determine the foreign national's country. Normally, this is the country on whose passport or other travel document the foreign national travels.

2. If the foreign national is from one of the countries with which the United States has a bilateral agreement requiring mandatory notification in the event of an arrest, the officer must immediately notify the consulate or representative of the foreign national's government.

3. If the foreign national is from a country with which the United States does not have a bilateral agreement requiring mandatory notification, the officer must still offer the arrestee the opportunity to have their consulate or interest section notified.

4. All foreign national arrestees must be afforded the option of consular notification, regardless of whether the United States maintains diplomatic relations with their countries. For example, if an Iraqi, Iranian or Cuban national is arrested, that arrestee must be given the opportunity to have their respective interest sections in Washington, D.C. notified.

5. Officers shall make written documentation of the notification of a consular official if the foreign national is from a mandatory notification country. If the foreign national is not from a mandatory notification country, the officer should document that the foreign national was advised of his or her right to have a consular official notified, and whether or not notification was made or refused by the foreign national.

6. Officers must realize that subjects still have to be advised of their Miranda rights where appropriate. Advising foreign nationals of the right to have a consular official notified of their arrest or detention, or the mandatory notification of a consular official, must be done in addition to, and not as a substitute for, Miranda warnings.

LOITERING OR PROWLING

General

This is a **crime-prevention law.** It is a useful tool to police officers in their task of protecting the public from a large segment of the criminal population. **State v. Ecker**, 311 So. 2d 104 (Fla. 1975).

Paragraph (1) of **FS §856.021** reads "It is unlawful for any person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity."

It is necessary to use considerable discretion in deciding what activities at what place, at what time, and in what manner are "not usual for law-abiding individuals."

Guidelines

Under the statute, the following circumstances may be considered in determining whether alarm or immediate concern is warranted and thus whether or not to make an arrest:

The subject

1. takes flight upon the appearance of a police officer;

2. refuses to identify himself or herself; or

3. tries to conceal himself or herself or any object.

Officers must be mindful that before considering these factors in determining whether alarm or immediate concern is warranted, the first element for a "loitering or prowling" arrest must be present, that is, activity "not usual for law abiding citizens." Factors such as citizen information or the officer's own observation may support such a belief. Remember, articulable suspicion must exist for a valid investigative detention. Flight at the sight of police officers in a high crime area is now considered articulable suspicion for an investigative detention under the Fourth Amendment. **Illinois v. Wardlow,** 528 U.S. 119 (2000). See Legal Bulletin 2000-2. Flight is one of several factors which may indicate alarm, which, along with activity not usual for law abiding citizens, may justify both an investigative detention and loitering and prowling arrest.

Before you make an arrest, you must:

1. Afford the subject an opportunity to dispel any alarm or immediate concern which would otherwise be warranted. By case law, Miranda warnings must be given before the subject is afforded the opportunity to dispel the officer's alarm.

2. Ask the subject to identify himself or herself and explain his or her presence and conduct.

The statute expressly provides that no person shall be convicted of an offense under this section if the arresting officer does not comply with the above procedure; the subject must be acquitted if the explanation given by him or her turns out to be true and, if believed by the officer at the time, would have dispelled the officer's alarm or immediate concern.

It is the Legal Bureau's opinion that the test for "justifiable and reasonable alarm" would be that of the "average citizen" rather than the subjective reaction of the investigating officer. The statute is not clear on this point.

§856.031 Warrantless Arrest— reads as follows:

"Arrest without warrant.–Any sheriff, police officer, or other law enforcement officer may arrest any **suspected loiterer or prowler** without a warrant in case delay in procuring one would probably enable such **suspected** loiterer or prowler to escape arrest."

When you observe any conduct or activity which you reasonably believe comes within the ambit of this statute, or you have probable cause based upon credible hearsay from a citizen or informant, you may arrest without a warrant where delay in making the arrest would probably allow the perpetrator to escape. The standard is one of reasonableness. Unless what you observe is an obvious case of loitering or prowling and such conduct gives rise to alarm or immediate concern, your initial approach should be pursuant to the provisions of **§901.151**–Stop and Frisk.

Before you make a decision ask yourself some questions:

1. Is the complainant or informant a "reliable" and "prudent" citizen?

2. Are there other bases for crediting the hearsay, e.g., the clothes match Mrs. Jones' description, subject is sweating from recent exertion, etc.

3. What are the probabilities that the subject is available and has correctly identified himself or herself for a later pickup pursuant to an arrest warrant?

4. Are there other bases for arrest or questioning, e.g., concealed weapons, attempting to conceal some object?

5. If you did not observe the subject "prowling," are you now observing "loitering" within the meaning of **§856.021?**

6. If you do not arrest the subject and he is not a local resident, are you left with a "justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity?"

7. Can the complainant/informant make a positive identification?

Probable Cause

At trial, the state must produce evidence to support a conviction. The totality of the evidence must convince the trier of fact of the guilt "beyond a reasonable doubt." The quantum of evidence needed

to justify an arrest is less than that for a conviction at trial.

Any arrest, whether under warrant or not, must be based on probable cause that the crime occurred and that the defendant was the perpetrator of the named crime. The source of the probable cause may be evidence gathered from the defendant, the scene of the arrest, informants, or other sources.

There are many working definitions given by courts (there is no statutory formulation), and they rely on terms like "reasonable grounds," "beliefs," and "special circumstances." Probable cause for arrest has been defined to be "...a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused man to be guilty." **Bryant v. State,** 155 So.2d 396 (Fla. 2d DCA 1963). The particular events preceding the arrest, both before the defendant was observed, as well as the defendant's actions before being taken into custody, are to be considered. The experience and training of the arresting officer and his expert analysis of the situation is also material to the totality of probable cause.

All items of evidence must be evaluated as to the reliability of source and substance. In some cases, the arresting officer may not have made any personal observations, but the totality of other evidence can constitute actual probable cause.

After the arrest, the officer should place all the facts surrounding the initial contact, stop and arrest into his or her report. Many details which the officer originally observed or was aware of prior to the stop (past history of burglaries in the area, nature of the neighborhood, behavior of the suspect before and after the stop/arrest, time of day, past reliability of informant, etc.) are material to the legality of the arrest. If these details are missing from the report, it will be difficult for the officer to recall them at a subsequent court appearance.

In court, all of these details should be related to show that the stop and arrest were justified on legal grounds. The officer must be prepared to articulate the basis for the stop. Mere hunch is not a legal ground, in itself, to make a lawful stop or subsequent arrest. A detailed report is a good basis to refresh one's memory of the original encounter; it also prevents defense counsel from successfully challenging the veracity of the in-court testimony.

A finding by a judge that there was a lack of probable cause for the arrest can result in any of the following:

1. Dismissal of the charge;
2. Suppression of any evidence found incident to the arrest;
3. Civil suit for damages against the officer and department;
4. Criminal charges against the officer.

For a discussion of possible civil and criminal liability, see the section on the Civil Rights Act in these Guidelines.

Release

Probable cause to arrest must exist before a subject can be taken into custody. Probable cause can be derived from a varying amount of "evidence" accumulated by the investigating officer(s). The amount of evidence may take weeks to accumulate or may occur within a millisecond (your observation of a subject leaving a convenience store under full steam with a paper bag in one hand and a pistol in the other). While the best evidence may be that which the officer observes with his or her own eyes, evidence from citizens may, after some analysis, be deemed credible enough to constitute probable cause.

But, during the normal course of any investigation, new data may be encountered which brings old data into discredit. Such new information may include: (1) Discovery that the citizen that appeared to be credible is a psychopathic liar; (2) the person who is apprehended halfway in the window of a single-family dwelling is not a burglar but the homeowner who forgot his or her keys, and all the identification in his possession shows this address to be his or her residence; (3) the driver of a stolen car is the son of the person to whom the car was originally lent by the owner.

In all such cases, the newly acquired evidence shows that there is no longer probable cause to believe that the suspect has committed a crime. In this event, the correct procedure is to release the person who was arrested. Any further holding or detaining of the individual would constitute false imprisonment (civil and criminal). The civil damages associated with the original arrest (legal at the time) would be negligible, but

compounding the situation by transporting the person, putting him or her in jail, and otherwise proceeding when it is known that there is an insufficient legal basis, can constitute grounds for punitive damages in both the state and federal courts.

While some districts do have general release forms which the individuals may sign, such forms are not legally necessary. It will be sufficient to free the person immediately upon discovering that probable cause does not exist, and explain the general situation to the person. Naturally, the individual(s) should be transported back to the original point of detention and helped in any other way necessary to "make them whole." This would include making arrangements to retrieve any automobile that had been impounded and/or towed.

In such cases, a detailed miscellaneous incident report must be prepared for the benefit of the officers and the department.

Taxicabs

Dade County Code §31-74 contains penalties for violation of listed sections; these are arrestable misdemeanors. Section 31-92 contains penalties for violation of all other sections, some of which are arrestable offenses. Other violations of chapter 31 should be cited on a Miami-Dade Transportation Administration Field Enforcement Report (FER), which are available at the district stations. The instructions for completing the FER are as follows.

1. Identify yourself to the driver.

2. Ask the driver to hand you his or her chauffeur's registration. An alternative approach is to ask the driver permission to enter his or her cab and see his or her chauffeur's registration displayed (front seat passenger side). NOTE: If driver is not with his or her cab, complete the FER and place the pink copy of the FER on the windshield under the windshield wiper blade and indicate on the FER in the remarks section that "driver not available."

3. Explain the violation to the driver. NOTE: All automatic suspension violations must be witnessed by the person writing the FER. Also, listen to the driver's explanation.

4. Complete the FER, if the violation is valid.

5. Explain the FER to the driver, including instructions on reverse side, i.e., how and where to pay fine, or when an automatic suspension is given where to pick up their license.

6. Have the driver sign the FER and date his or her signature.

7. Give the driver the PINK COPY OF THE FER and return his or her chauffeur's registration (except in the case of an automatic suspension).

8. Make notes on gold copy of the FER that might be needed for hearing testimony.

9. For all automatic suspensions, attach the driver's chauffeur's registration to the FER.

10. For all vehicle automatic suspensions, remove the for-hire license from the rear window, remove the meter sticker, remove the meter lead seal, and the inspection sticker from the front window and attach them to the FER.

11. Turn in completed FER to your supervisor for transmittal to the MDTA-PTRB office.

12. All FERs should be sent Inter-Office Mail to the MDTA-PTRB Office, 44 West Flagler Street, 14th Floor.

13. DO NOT PUT THE AMOUNT OF THE FINE ON THE FER. THAT FINE WILL BE ASSESSED AT THE MDTA-PTRB OFFICE.

Any violation of a state traffic law should be cited on a Uniform Traffic Citation Form in the customary manner.

Baker Act

FLORIDA STATUTE §394.463(2)(a)2. provides a law enforcement officer with the ability to take a person who meets the criteria for involuntary examination (more commonly referred to as a "Baker Act") into custody and deliver him or her to the nearest receiving facility. A "Baker Act" is a person whose behavior, when seen by an of officer leads that officer to believe the person is mentally ill and will be a danger to himself or herself or the community if he or she does not receive any care or treatment. An officer who takes a person fitting Baker Act criteria into custody must deliver him or her to the nearest HRS designated receiving facility. Such facilities provide examinations and emergency short term treatment. The officer must then write a

report detailing the circumstances under which the person was taken into custody. Officers should note that the taking of persons into custody pursuant to Baker Act criteria does not constitute arrest.

Warrantless Arrest

A police officer may make a warrantless arrest if there is probable cause to believe that a felony has been committed and the individual is the perpetrator of the crime. If the crime involved is a misdemeanor, the officer may not ordinarily make a warrantless arrest unless the crime was committed in his presence. Any complaining witness or victim may file a complaint at any office of the State Attorney. See Guidelines, Court Procedures, Complaints.

Upon evaluation, the State Attorney may file a direct information. If he or she does, the Clerk of the Court will then issue an arrest warrant. However, the complaint will probably be forwarded to the Clerk who will take the affidavit and administer the oath. The Clerk will then issue a summons. The complainant is now entitled to a hearing before a magistrate. The magistrate may issue a capias (warrant) if the party complained against fails to appear.

There are a few statutory exceptions to the above provisions concerning misdemeanors. Some instances where a police officer may arrest without a warrant (provided that there is probable cause) are:

1. Carrying Concealed Weapons – §790.01, §790.02.
2. Loitering or Prowling–§856.021.
3. Possession of Marijuana under twenty grams–§893.13(3).
4. Retail or Farm Theft–§812.014.
5. Offense connected with traffic accident after investigation at scene. §316.645.
6. An act of domestic violence as defined in §741.28 or child abuse as defined in §827.04(2) and (3) has been committed and the law enforcement officer reasonably believes that there is danger of violence unless the arrest is made.
7. Acts of domestic violence committed in violation of a domestic violence injunction obtained pursuant to §741.30.
8. Acts of repeat violence committed in violation of a repeat violence injunction obtained pursuant to §784.046.
9. Trespass upon grounds or facilities of a school–§228.091.
10. Disorderly Conduct on the premises of a public lodging establishment– §509.143.
11. Stalking–§784.048.
12. Acts that violate a condition of pretrial release provided in §903.047 when the original arrest was for an act of domestic violation as defined in §741.28(1).
13. Battery–§784.03.
14. Criminal Mischief or a graffiti related offense–§806.13.
15. Trespass into secure areas of an airport–§810.09.

CIVIL RIGHTS-FEDERAL LAW

Police Liability Under Federal Law

General

Whenever any individual interferes with another's rights there is a possibility of civil or criminal sanctions. The nature and extent of the protection that either the State or Federal governments give to an individual's rights is determined by statute and case law of the particular jurisdiction.

The Federal law in this area has been termed "the Civil Rights Acts" but is actually divided into two areas, civil and criminal, each with its own unique definitions.

Civil Action for Deprivation of Rights

SECTION 1983 of Title 42, U.S. Code

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

A plaintiff who can prove actual damages in a Section 1983 suit is entitled to recover such damages from a defendant who deprived him or her of his or her civil rights.

"The only elements which need to be present in order to establish a claim for damages under the Civil Rights Act are that the conduct complained of was engaged in under color of state law, and that such conduct subjected the plaintiff to the deprivation of rights, privileges, or immunities secured by the Constitution of the United

States." **Marshall v. Sawyer,** 301 F.2d 639 (CA9 1962)

If you act in your official capacity you are acting under color of state (or local) law, and if your conduct results in the deprivation of any constitutionally guaranteed rights, you could be liable not only for actual damages, but for punitive damages if the element of malice is shown. Not only are improper acts committed under the color of law actionable, but also any act pursuant to local custom or usage that deprives a person of their federal constitutional rights.

You are not liable for those acts which are purely ministerial in nature, such as the serving of warrants (search or arrest) pursuant to a court order unless you exceeded your authority. If you arrest without probable cause, you could be liable. However, you will not be held liable for enforcing any law that is later declared unconstitutional. Even if the complainant was convicted in state court in connection with a transgression (e.g., resisting arrest, burglary, or any crime incidental), this is not an available defense which shields you from liability; defenses available are a matter of Federal law and policy. States cannot create defenses to the Federal Civil Rights Act. Good faith and probable cause are defenses under a charge of false arrest brought under §1983 and prevalent tort law.

The act complained of need not have been willfully committed for liability to attach, nor is it necessary to prove specific intent to deprive the plaintiff of a federal right.

You are reminded that all causes of action arising out of §1983 must be for those acts committed by the officer under color of law, regulation, custom, or usage.

Conspiracy to Interfere with Civil Rights–Depriving Persons of Rights or Privileges

SECTION 1985

(3) "If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws...in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

This sanction deals with conspiracies to interfere with constitutionally guaranteed rights. It differs from §1983 in that it sanctions conspiracies of either public officials or private persons. Conspiracy necessarily involves two or more persons and a successful completion of the conspiracy is not essential, but rather an overt act in furtherance of the conspiracy injuring a person or depriving him or her of property or the exercise of any rights or privileges of a citizen of the United States is compensable. There must also be an intentional or purposeful design to deprive the citizen of any of his or her secured rights.

Unlike §1983 which is available to all persons within federal jurisdiction, including aliens unlawfully in the country, §1985 appears only to protect the rights and privileges of citizens of the United States.

Criminal Liability

Title 18 USC, §242 reads as follows:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title,

or imprisoned for any term of years or for life, or both, or may be sentenced to death.

The Civil Rights Act of 1871 is civil in nature and the remedies include money damages (nominal, compensatory, and punitive), injunctions and declaratory judgments. Title 18 deals with criminal sanctions for some of these same types of illegal activities, and the courts read this section in conjunction with civil sanctions.

There are two ways you can be liable when your actions deprive a person of a right, privilege, or immunity protected by the Constitution or laws of the United States:

(1) If your actions are willful, i.e., you intentionally deprive somebody of his rights; or

(2) By willfully subjecting any person to a different punishment or penalty because such person is an alien, or because of their race or color, other than is prescribed for the punishment of citizens.

A violation of §242 may subject the offender to a sentence of death, imprisonment, a fine, or both imprisonment and a fine.

Examples of actionable deprivations under (1) above:

(a) Arrest made without probable cause or an arrest warrant.

(b) Illegal search and seizure.

(c) Unlawful assault or battery.

(d) Wrongful homicides.

In all of the above actions there must be an element of willfulness on the part of the officer, but the fact that the defendant officer may not have been thinking in constitutional terms is not material where his claim was not to enforce local law, but to deprive a citizen of a right and that right was protected by the Constitution.

A violation of this section is a misdemeanor and is punishable by a fine of no more than $1,000 or imprisonment for not more than one year or both, except where a death results. In that case, it is a felony and is punishable by imprisonment for any term of years or for life.

Section 241 pertains to police officers acting under color of law, as well as to private citizens, but it differs from §242 in two major respects. First, §241 is applicable only to a conspiracy involving two or more persons. Secondly, §241 pertains only to citizens of the United States, whereas §242 pertains to any person within federal jurisdiction.

A violation of §241 is a felony which may subject the offender to a sentence of death, imprisonment, a fine, or both imprisonment and a fine.

The county may assume responsibility for compensatory damages, but it is highly unlikely that any local government would be authorized to pay any part of a judgment or claim which is punitive.

COURT PROCEDURES

Complaints–Misdemeanors

How A Citizen Can File A Misdemeanor Complaint

(a) The complainant must appear in person at one of the offices of the State Attorney and be prepared to give a statement and sign a complaint under oath. If a police report was made, the report number should be given to the person taking the complaint at the State Attorney's Office at the time that the complaint is made.

(b) Complaints may be filed at the following locations:

Caleb Center
5400 N.W. 22nd Ave., (305) 636-2240

Graham Building,
1350 N.W. 12th Ave., First Floor,
(305) 547-0250

South Dade Government Center,
10710 S.W. 211th St., Room 202,
(305) 239-1430

North Dade Justice Center
15555 Biscayne Blvd., N. Miami Beach
(305) 354-8725

Depositions

General

Department members should realize that when the department and/or individual members are being sued, our attorneys must depose the officers concerned or any witnesses involved in the action. When the officers are defendants, no subpoena is necessary for their appearance at a deposition being conducted by our own attorneys. It is in the interest of the officer to appear and render whatever assistance may be required to the attorney representing the department.

If department personnel are subpoenaed by the plaintiff's attorney, failure to appear can result in the court imposing sanctions, such as striking any affirmative defenses, a contempt of court charge and